

Appl. No. 10/580,820  
Amendment dated March 7, 2011  
Reply to Office Action of 12/07/2010

**REMARKS**

**Reconsideration And Allowance  
Are Respectfully Requested.**

Claims 1-3, 5-7, 9 and 11 are currently pending. Claims 1, 5 and 11 have been amended. Claims 4, 8 and 10 have been cancelled. No new matter has been added. Reconsideration is respectfully requested.

In response to the outstanding Office Action dated December 7, 2010, Applicant has amended claims 5 and 11 to address the rejections under 35 U.S.C. §112, second paragraph. The alternative language “or” has been replaced with “and”. Further, the ambiguity of the wording “at least one” has also been removed. The two claims are now definite and in condition for review. As such, Applicant respectfully requests the rejection under §112 be withdrawn.

Regarding the rejection under 35 U.S.C. §103(a) for claims 1-3, 5-7, 9 and 11, Applicant respectfully requests reconsideration of same in view of the amendments to independent claims 1 and 11. Applicant’s novel therapeutic face mask comprises a plurality of non-compressible non-combustive passive pressure points which extend and are located on the under surface of the mask body. Each of the pressure points is selectively removable and attachable to the undersurface to coincide with acupressure points of a person’s face. The pressure points are spaced both between and below the first and second eye apertures and each has a hemispherical or curved outer shape. In addition, groups of open apertures are provided. Further,

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Applicant wishes to point out that the pressure points are non-conductive to enable proper compressibility in the areas desired.

The claims have been rejected as being unpatentable over U.S. Patent No. 5,099,829 issued to Wu in view of U.S. Patent No. 3,279,468 issued to Le Vine, and further in view of U.S. Patent No. 4,233,966 issued to Takahashi. Wu expressly provides a massage device with conductive projections 2. The device requires these projections be conductive to enable the disclosed device to operate. Le Vine also discloses a device having projections that are expressly conductive.

If one of ordinary skill in the art was to attempt to modify Wu to utilize non-conductive projections, such modification would render the invention inoperable and destroy Wu's invention, the express purpose for which Wu's device was designed. Predictability as discussed in KSR encompasses the expectation that prior art elements are capable of being combined, as well as the expectation that the combination would have worked for its intended purpose. An inference that a claimed combination would not have been obvious is especially strong where the prior art's teachings undermine the very reason being proffered as to why a person of ordinary skill would have combined the known elements. *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314 (Fed. Cir. 2009). In view of such, Applicant's claims as currently presented would not have been obvious to one of ordinary skill in the art as set forth

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under 35 U.S.C. 103(a) based on the art cited. Accordingly, Applicant respectfully requests the outstanding rejections be withdrawn.

With regard to the refusal to consider the cited references from the IDS filed November 30, 2010, Applicant submitted a Supplemental IDS. As such, Applicant respectfully requests the references be considered in due course.

If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact Applicant's representative at the below number.

It is believed that this case is now in condition for allowance and reconsideration thereof and early issuance is respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stewart L. Gitler", written in a cursive style.

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